2144.

SUPREME COURT OF THE UNITED STATES.

No. 161.

JAMES TRIGG, RICHARD PRYOR, AND JOHN W. PAUP, PLAINTIFFS IN ERROR,

vs.

THOMAS S. DREW, AS GOVERNOR OF THE STATE OF ARKANSAS, AND SUCCESSOR OF ARCHIBALD YELL, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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STATE OF ARKANSAS,
In the supreme court, ss.

Be it remembered, that at a supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, on the first Monday, being the third day of July, A. D. 1848, before the honorable Thomas Johnson, the honorable William Conway B., and the honorable Christopher C. Scott, judges of said court, amongst others were the following proceedings, to wit:

Writ of error to Pulaski circuit court.

JAMES TRIGG, Richard Pryor, and John W. Paup, plaintiffs,
vs.
THOMAS S. DREW, as Governor of the State of Arkansas, and as successor in office of Archibald Yell, late Governor of said State, defendant.

Be it remembered, that heretofore, to wit, on the tenth day of January in the year eighteen hundred and forty-eight, the said plaintiffs prosecuted and sued out of the office of the clerk of said supreme court a writ of error in said cause, which said writ of error is in the following words:

Writ of error.

In the supreme court.

The State of Arkansas to the clerk of the circuit court of Pulaski county, greeting:

Because in the record and proceedings, and also in the giving of judgment in a suit which was in said circuit court, before the honorable William H. Feild, judge thereof, between Thomas S. Drew, as Governor of the State of Arkansas, and as successor in office of Archibald Yell, late Governor of said State, plaintiff, and James Trigg, Richard Pryor, and John W. Paup, defendants of a plea of debt, manifest error has intervened to the damage of the said defendants, as they allege; you are therefore hereby commanded, that, if final judgment be therein given, you send to the supreme court, under your official seal, the record and proceedings aforesaid, together with this writ, on the first day of next term of said supreme court of said State, which will be held on the first Monday of July, A. D. 1848, at the court-house in the city of Little Rock, in said State, that the record and proceedings aforesaid being inspected by said supreme court, it may cause to be done therein what according to law ought to be done, and that you return this writ under your official seal.

Witness Luke E. Barber, clerk of said supreme court, who has hereunto set his hand as such clerk, and affixed the seal of said supreme court, at office, this tenth day of January, A. D. 1848, and of the independence of the United States the seventy-second year.

[Seal of sup. ct.]

L. E. BARBER, *Clerk*.

And afterwards, to wit, on the said tenth day of January, in the year eighteen hundred and forty-eight, the said plaintiffs sued out of the office of the clerk of said supreme court a writ of scire facias in said cause, in the words following, to wit:

Writ of scire facias.

In the supreme court.

The State of Arkansas to the sheriff of Pulaski county, in said State, greeting:

Because in the record and proceedings, and in the giving of judgment, in a suit which was in the circuit court of said county of Pulaski, before the judge thereof, between Thomas S. Drew, as Governor of the State of Arkansas, and as successor of Archibald Yell, plaintiff, and James Trigg, Richard Pryor, and John W. Paup, defendants, of a plea of debt, as it is alleged by the said defendants, manifest error has intervened to their great damage; and it being proper that such error, if any, should be corrected and speedy justice done, you are therefore commanded to summon the said Thomas S. Drew, as such Governor, that he appear before the said supreme court of the State of Arkansas, at the court-house in the city of Little Rock, in said State, on the first day of the next term of said supreme court, which will be held on the first Monday of July, A. D. 1848, to respond to a writ of error issued in said case, and show cause, if any he have, why said judgment should not be reversed, and altogether held for nought; and that you make due return of this writ.

In testimony whereof I have hereunto set my hand, and affixed the seal of my office, at the city of Little Rock, this tenth day of [Seal of supp. ct.] January, A. D. 1848, and of the independence of the United States the seventy-second year.

L. E. BARBER, *Clerk.*

And afterwards, to wit, on the first day of February, in the year eighteen hundred and forty-eight, the said plaintiffs filed in the office of the clerk of said supreme court the said writ of error, with the return thereto of the clerk of the circuit court of Pulaski county, to whom the same was addressed, in the following words:

Return to writ of error.

THE STATE OF ARKANSAS, *county of Pulaski, ss.*

I, Gordon N. Peay, clerk of the Pulaski circuit court, do hereby certify, that I have executed the within writ of error by making a true and complete transcript of the record and proceedings in the case therein mentioned, and sending up the same hereunto attached, officially certified, to the supreme court of the State of Arkansas.

In testimony whereof I do hereunto set my hand, and affix the seal [Seal of Pulaski ct. of l.] of my office, at Little Rock, this 13th day of January, A. D. 1848.

GORDON N. PEAY, *Clerk,*
By JNO. C. PEAY, *Dep. Clk.*

And attached to said writ of error, and filed therewith, was a transcript of the record and proceedings of the circuit court of Pulaski county in said cause, which is in the following words, to wit:

Transcript of record.

Pleas had before the honorable William H. Feild, judge of the Pulaski circuit court, on the 23d day of December, A. D. 1847, in the following entitled case, to wit:

THOMAS S. DREW, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, plaintiff, vs. JAMES TRIGG, Richard Pryor, and John W. Paup, defendants. } In debt.

ARKANSAS, *sct.*

In Pulaski circuit court, to October term, A. D. 1847.

Declaration.

Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, plaintiff in this suit, by attorney, complains of James Trigg, Richard Pryor, and John W. Paup, defendants herein, of a plea of debt and demands, that they render unto him, as such Governor, the sum of sixty-eight hundred and sixty dollars, with interest thereon, according to the tenor and effect of the several writing obligatory hereinafter mentioned, which they owe to and unjustly detain from him as such Governor. For that whereas heretofore, to wit, on the 13th day of May, in the year of Christ 1842, at the State of Arkansas, Hempstead county, to wit, at the county aforesaid, the said defendants, said Trigg under the style of James Trigg, said Pryor under the description of Richard Pryor, and said Paup under the style of John W. Paup, together with one Robert Carrington, who has since then died and is not sued, made their certain writing obligatory, sealed with their seals, bearing date the day and year last aforesaid, and now here to the court shown, and thereby then there, jointly and severally, twelve months after the date thereof, promised to pay Archibald Yell, Governor of the State of Arkansas and his successors in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of thirteen hundred and seventy-two dollars, parcel of said sum first demanded, in specie or its equivalent, bearing interest from date at the rate of ten per cent. per annum until paid, for value received, and then there delivered the same to the said Yell, Governor as aforesaid. And said plaintiff in fact says, that he is the successor in said office of Governor to said Yell, and is acting as such. By means whereof an action has accrued to said plaintiff, as such Governor as aforesaid, to demand and have of and from said defendants said last named sum, with interest thereon, according to the tenor and effect of the said writing obligatory.

And whereas, also, heretofore, to wit, on the 13th day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead c'ty, to wit, at the county aforesaid, the said defendants, said Trigg under the style of James Trigg, said Pryor under the style of Rich'd Pryor, and said Paup under the style of Jno. W. Paup, together with one Robert Carrington, who is since then dead and is not sued, made their certain other writing obligatory, sealed with their seals, bearing date the day and year last aforesaid, and now here to the court shown, and thereby, then there, two years after the date thereof, jointly and severally, promised to pay Archibald Yell, Governor of the State of Arkansas, and his successors in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of thirteen hundred and seventy-two dollars, other parcel of said sum first demanded, in specie or its equivalent, bearing interest from date at the rates of ten per cent. per annum until paid, for value received, and then there delivered the same to the said Yell, Governor as aforesaid. And said plaintiff in fact says, that he is the successor of the said Yell in said office of Governor, and is acting as such; by means whereof an action has accrued to the said plaintiff as such Governor as aforesaid, to demand and have of and from said defendant said last named sum, with interest thereon, according to the tenor and effect of said bond. And wherens also, heretofore, to wit, on the 13th day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead c'ty, to wit, at the county aforesaid, the said defendant, said Trigg under his style of James Trigg, said Pryor under the style of Rich'd Pryor, and said Paup under the style of Jno. W. Paup, together with one Robert Carrington, who is since then dead and is not sued, made their certain other writing obligatory, sealed with their seals, bearing date the day and year last aforesaid, and now here to the court shown, and thereby, then there, three years after the date thereof, jointly and severally, promised to pay Archibald Yell, Governor of the State of Arkansas, and his successors in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of thirteen hundred and seventy-two dollars, other parcel of said sum first above demanded, in specie or its equivalent, bearing interest from date at the rate of ten per cent. per annum, until paid, for value received; and then there delivered the same to the said Yell, Governor as aforesaid; and said plaintiff, in fact says, that he is the successor in said office of Governor to the said Yell, and is acting as such; by means whereof an action has accrued to the said plaintiff, as Governor as aforesaid, to demand and have, of and from said defendants, said sum last mentioned, with interest thereon, according to the tenor and effect of said last named writing obligatory. And whereas also, heretofore, to wit, on the 13th day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead c'ty, to wit, at the county aforesaid, the said defendants, said Trigg under his style of James Trigg, said Pryor under his style of Rich'd Pryor, and said Paup under the style of Jno. W. Paup, together with one Robert Carrington, who is since

then dead and is not sued, made their certain other writing obligatory, sealed with their seals, bearing date the day and year last aforesaid, and now here to the court shown; and thereby then there, four years after date, jointly and severally, promised to pay Archibald Yell, Governor of the State of Arkansas, and his successors in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of thirteen hundred and seventy-two dollars, other parcel of said sum first demanded, in specie or its equivalent, bearing interest from date at the rate of ten per cent. per annum, until paid, for value received, and then there delivered the same to the said Yell, Governor aforesaid; and said plaintiff in fact says, that he is the successor to the said Yell in said office of Governor, and is now acting as such; by means whereof an action has accrued to the said plaintiff, as such Governor as aforesaid, to demand and have, of and from said defendants, said last named sum with interest thereon, according to the tenor and effect of said writing obligatory last mentioned. And whereas also, heretofore, to wit, on the 13th day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead c'ty, to wit, at the county aforesaid, the said defendants, said Trigg under his style of James Trigg, said Pryor under the description of Rich'd Pryor, and said Paup under the description of Jno. W. Paup, together with one Robert Carrington, who is since then dead and is not sued, under their other certain writing obligatory, sealed with their seals, bearing date the day and year last aforesaid, and now here to the court shown, and thereby then there, five years after the date thereof, jointly and severally, promised to pay said Archibald Yell, Governor of the State of Arkansas, and his successors in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of thirteen hundred and seventy-two dollars, other parcel of said sum first demanded, in specie or its equivalent, bearing interest from date at the rate of ten per cent. per annum until paid, for value received; and then there delivered the same to the said Yell, Governor as aforesaid; and said plaintiff, in fact says, that he is the successor to the said Yell in said office of Governor, and is acting such; by means whereof an action has accrued to the said plaintiff, as such Governor as aforesaid, to demand and have, of and from the said defendants, said sum last mentioned, with interest thereon according to the tenor and effect of the said last named bond. Yet, neither said defendants, nor said Carrington in his lifetime, or any one for him since his death, or any one or either of them, have as yet paid said sum first above demanded, or any part thereof, or the interest thereon, or any part thereof, to the said Yell while Governor of said State, or any one authorized to receive the same, or to the said plaintiff as such Governor as aforesaid, while he has held said office; but to do so have hitherto, and still do, wholly neglect and refuse, to the damage of said plaintiff as such Governor as aforesaid of four thousand dollars, and therefore he sues as such, &c.

E. CUMMINS,
Land atto. and State sol.

Filed, and writs issued to Pulaski, Lafayette, and Hempstead counties, this 20th day of August, 1847.

GORDON N. PEAY, *Clerk.*

Summons to Pulaski.

THE STATE OF ARKANSAS, *county of Pulaski.*

The State of Arkansas to the sheriff of Pulaski county, greeting:

You are hereby commanded to summon John W. Paup, if he be found within your bailiwick, to appear before the judge of our circuit court, of Pulaski county, at the court house in the county aforesaid, on the first day of our next October term, at a court to be holden on the third Monday of October next, then and there to answer Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, of a plea of debt, and that he render unto him as such Governor the sum of sixty-eight hundred and sixty dollars, with interest thereon, according to the tenor and effect of the several writings obligatory mentioned in said plaintiff's declaration, which he owes to, and unjustly detains from, him as such Governor; to the damage of said plaintiff as such Governor as aforesaid of four thousand dollars. This suit is instituted against the above named defendant, together with James Trigg and Richard Pryor, against whom separate writs *and* issued to Hempstead and Lafayette counties for the same cause of action, and that you make due return of this writ to our said circuit court.

Witness Gordon N. Peay, as clerk of said circuit court, and seal of said court, this 21st day of August, A. D. 1847, and of the State the 12th year.

[SEAL.]

GORDON N. PEAY, *Clerk.*

I hereby certify, that I executed the within writ on the within named John W. Paup, by delivering to him a true copy of the same in Pulaski county, State of Arkansas, on the 4th day of September, A. D. 1847. Service 50; copy 25; miles 6; = 81c.

A. J. HUTT, *Sheriff,*
By N. T. GAINES, *D. S.*

Returned and filed 7th September, 1847.

GORDON N. PEAY, *Clk.*

Summons to Hempstead.

THE STATE OF ARKANSAS, *county of Pulaski.*

The State of Arkansas to the sheriff of Hempstead county, greeting:

You are hereby commanded to summon Richard Pryor, if he be found within your bailiwick, to appear before the judge of our circuit court of Pulaski county, at the court house in the county aforesaid, on the first day of our next October term, at a court to be held on the third Monday of October next, then and there to answer Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Ar-

chibald Yell, late Governor, of a plea of debt, and that he render unto him as such Governor the sum of sixty-eight hundred and sixty dollars with interest thereon, according to the tenor and effect of the several writings obligatory, mentioned in said plaintiff's declaration, which he owes to, and unjustly detains from, him as such Governor as aforesaid, to the damage of said plaintiff as such Governor as aforesaid of four thousand dollars. This suit is instituted against the above named defendants, together with John W. Paup and James Trigg, against whom separate writs are issued to Pulaski and Lafayette counties for the same cause of action, and that you make due return of this writ to our said circuit court.

Witness Gordon N. Peay as clerk of said circuit court, and seal of said court, this 21st day of August, A. D. 1847, and of the State the 12th year. GORDON N. PEAY, *Clerk*.

[SEAL.]

Sheriff's return.

I executed the within writ on the within named Richard Pryor, on the 21st day of September, A. D. 1847, in Hempstead county, Arkansas, by then and there reading to him, in his presence and hearing, the contents hereof. Service 50; 30 cir. miles travel at 3, 90—$1 40.

E. NANCE, *Sheriff*.
By J. C. KERBY, *D. Sh'ff*.

Returned and filed, 5th Oct., 1847.

GORDON N. PEAY, *Cl'k*.

Summons to Lafayette.

THE STATE OF ARKANSAS, *county of Pulaski*.

The State of Arkansas to the sheriff of Lafayette county, greeting:

You are hereby commanded to summon James Trigg, if he be found within your bailiwick, to appear before the judge of our circuit court of Pulaski county, at the court-house in the county aforesaid, on the first day of our next October term, at a court to be holden on the third Monday of October next, then and there to answer Thomas S. Drew, Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, of a plea of debt, and that he render unto him as such Governor the sum of sixty-eight hundred and sixty dollars, with interest thereon, according to the tenor and effect of the several writings obligatory mentioned in said plaintiff's declaration, which he owes to and unjustly detains from *his* as such Governor, to the damage of said plaintiff as such Governor as aforesaid of four thousand dollars. This suit is instituted against the above named defendant, together with John W. Paup and Richard Pryor, against whom separate writs are issued to Pulaski and Hempstead counties for the same cause of action, and that you make due return of this writ to our said circuit court.

Witness Gordon N. Peay, as clerk of said circuit court, and seal of said court, this 21st day of August, A. D. 1847, and of the State the 12th year. GORDON N. PEAY, *Clerk*.

[SEAL.]

Trigg et als. vs. Drew.

Sheriff's return.

I do hereby certify, that I executed the within writ in Lafayette county, Arkansas, on the within named James Trigg, by reading the contents of the same to him, and within his presence and hearing, on the 4th day of September, A. D. 1847. To 70 miles cir. travel $2 10, service 50—$2 60.

H. C. OWEN,
Sheriff of Lafayette county, Arkansas.

Returned and filed, 16th Oct., 1847.

GORDON N. PEAY, *C'k.*

Proceedings had, October 18th, A. D. 1847.

Filing prayer of oyer.

On this day comes the defendants, by attorney, and file their prayer of oyer in this case.

In Pulaski circuit court, at October term, A. D. 1847.

DREW, Governor, plaintiff,
vs.
TRIGG, PRYOR, and PAUP, defendants.

Prayer of oyer.

And the defendants come and crave oyer of the several supposed writings obligatory in said declaration mentioned, together with all endorsements thereon.

PIKE & BALDWIN.

Filed 18th Oct., 1847.

G. N. PEAY, *C'k.*

Proceedings had, October 20th, A. D. 1847.

Grant of oyer.

On this day comes the parties, by attorney, and the plaintiff grants oyer in this case, by exhibiting the original instrument sued on, which is accepted by the defendants as a sufficient grant of oyer.

Proceedings had, November 2d, A. D. 1847.

Filing plea of tender and bringing money into court.

On this day come the said defendants, by attorneys, and file their plea of tender; and the said defendants bring into court here, and deposite herein, the sum of six thousand one hundred dollars, in notes issued by the Bank of the State of Arkansas, and the sum of ten cents in current money; and, on motion, it is ordered by the court, that the clerk deposit said bank notes and current money in the Real Estate Bank of the State of Arkansas, and the said defendants pay all the costs accrued in this cause up to this time.

In Pulaski circuit court, at October term, A. D. 1847.

JAMES TRIGG, RICHARD PEYTON, and JOHN W. PAUP, defts., } Debt.
ads.
THOMAS S. DREW, Governor, &c., pl'ff.

Plea of tender.

And the defendants come, &c., when, &c., and say, that as to part of the sum above demanded hereinafter specified, the plaintiff his action aforesaid thereof against them ought not further to have or maintain, because they say that the five several bonds in said declaration mentioned were executed by these defendants at the time when, &c., in said declaration mentioned, for the price and purchase money of and in consideration of the sale to said James Trigg, by said Archibald Yell, then Governor of said State, on the day of the date of said bonds, of the right to enter and locate eleven hundred and twenty acres of the public lands of the United States, as a part and portion of the two entire townships of land which, by the act of Congress of the United States, entitled "An act concerning a seminary of learning in the Territory of Arkansas," were directed to be set aside and reserved from sale out of the public lands of the United States within said Territory, for the use and support of an University within said Territory; and which by act of Congress, entitled "An act supplementary to the act entitled 'An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,'" were vested in said State of Arkansas, and which said acts of Congress were approved, the first on the 2d day of March, 1827, and the latter on the 23d day of June, 1836; which right so to enter and locate the said quantity of land, under and by virtue of said grant, reservation and acts of Congress, was, on the day and year aforesaid, sold to said James Trigg, by said Government, as agent of said State, under and by virtue of the act of the General Assembly of the State of Arkansas, approved 28th December, 1840, entitled "An act to authorize the Governor to dispose of the Seminary lands," whereby said Governor was authorized and empowered to sell and dispose of the right to enter and locate, under and by virtue of said grant, five sections and nine-sixteenths of a section of land then remaining unlocated under said grant, on any of the public lands of the United States within said State, unappropriated, in legal subdivisions of not less than one-half quarter section; and such right so to enter and locate such quantity of eleven hundred and twenty acres of land was then, as aforesaid, sold and transferred by said Governor, as the agent of said State, to James Trigg, at and for the consideration and price of six dollars twelve and a half cents per acre, amounting together to the sum of six thousand eight hundred and sixty dollars, to secure the payment of which to said State, and upon and for no other use, purpose, or consideration whatever, these defendants then executed, signed, sealed, and delivered the five several writings obligatory in the declaration mentioned; and the de-

fendants say that the same, and the moneys and interest thereby intended to be secured to be paid, belong exclusively to the State of Arkansas, and constitute and are in law and fact a debt due to said State, and to no other person, body corporate or politic, whatever, and the entire interest therein belongs to said State, and said Governor is therein and in regard thereto, a mere naked trustee, and but a nominal party in said suit; and the defendants further aver, that before the sale and the execution and delivery of the writing obligatory aforesaid, to wit, on the 2d November, 1836, by an act of the General Assembly of said State of Arkansas, entitled "An act to incorporate the Bank of the State of Arkansas," approved on the day and year last aforesaid, the Bank of the State of Arkansas, a public corporation, was created, the State being the only stockholder therein, and was authorized to issue and emit, and issue such bank bills and notes as are hereinafter mentioned, and to exercise banking powers and privileges; and it was among other things provided and enacted, that the funds arising from the sale of the lands granted as aforesaid, should be deposited in the principal bank of said State, and constitute a part of the capital thereof; and it was further expressly provided, enacted, and stipulated, and by said State expressly agreed and contracted, that all the bills and notes issued by said bank, should be received in all payments of debts due to said State of Arkansas; which enactment, provision, stipulated and contract, was in full force, not in any wise repealed, annulled, and set aside, at the time and times of the issuance by said bank of all its bills and notes, and especially of the bills and notes hereinafter mentioned; and the same were issued on the faith and credit, and by means thereof obtained currency, and said contract is in all respects binding, obligatory, and valid, upon and against said State and said plaintiff, and cannot be repudiated by said State, nor the obligation of said contract impaired, under the Constitution of the United States. And the defendants further say, that after said several bonds fell due, and after the commencement of this suit, to wit, on the first day of November, A. D. 1847, at Little Rock, in the county of Pulaski, in said State, the defendants were ready and willing, and then there offered and tendered, to said plaintiff and to said State, and to either of them, the sum of six thousand and sixty dollars, in notes and bank bills of said Bank of the State of Arkansas, issued by her, signed by her president and cashier, payable each to a certain person or bearer, in current money of the United States, and all payable either on demand or long before said bargain and contract due; to receive which sum of the defendants the said plaintiff and said State then wholly refused; and the defendants aver that said sum of six thousand and sixty dollars was the whole amount of principal and interest due upon said five writings obligatory, in respect of six hundred and forty acres of said lands; and the said defendants now bring into court here the said sum of six thousand and sixty dollars, in the notes and bills aforesaid, ready to be paid to the plaintiff or said State, in respect of six hundred and forty acres aforesaid, if either of them will accept the same, together with all the costs accrued in this cause up to

this time; and this they are ready to verify; wherefore they pray judgment if the said plaintiff ought further, &c.

PIKE & BALDWIN.

Filed 2d November, 1847. GORDON N. PEAY, *Clerk*.

In Pulaski circuit court, at October term, A. D. 1847.

THOMAS S. DREW, Governor, &c., plaintiff,
vs.
JAMES TRIGG, Richard Pryor, and John W. Paup, defendants.

Deposite of Money.

And the defendants, on this second day of November, 1847, come into court, and bring here into court the sum of six thousand one hundred dollars in notes issued by the Bank of the State of Arkansas, and ten cents in specie, to wit, in lawful money of the United States, and aver that the said several writings obligatory in the said declaration mentioned belong to, and create a debt to the State of Arkansas, and were given upon and for the purchase of certain of the lands heretofore granted by the Congress of the United States to said State, for the purpose of supporting an University in said State, and for no other use or consideration whatever; and that said State is bound to accept said sum of six thousand one hundred dollars in said bank notes, issued by said Bank of the State of Arkansas, and said sum of ten cents, in full payment of said several writings obligatory, the same being the whole amount of principal and interest due upon said several writings obligatory in respect of the right to enter and locate six hundred and forty acres of land, granted by the said act of Congress; and the defendants now here offer to pay all the costs of this suit, and pray that said plaintiff may accept the said bank notes and money in full payment of so much of principal and interest as aforesaid, and that this suit no further proceed, &c.

PIKE & BALDWIN.

Filed 2d November, 1847.

GORDON N. PEAY, *Clerk*.

Proceedings had November 3rd, A. D. 1847.

On this day comes the said plaintiff by attorney, and files her demurrer to the defendants' plea in this case.

ARKANSAS, *sct.*

In Pulaski circuit court, October term, A. D. 1847.

THOMAS S. DREW, Gov.,
vs.
JAMES TRIGG and others. } Debt.

Demurrer.

And now on this day comes the said plaintiff, and says that the said plea of said defendants herein, and the matters and things therein contained,

are not sufficient in law to have or preclude the said plaintiff from having his action aforesaid, and he is not bound by the law of the land to answer the same; wherefore he prays judgment thereof, and for his debt and damages, and according to the statute said plaintiff sets down and shows to the court the following grounds and causes of demurrer, to wit:

1st. That the said demands sued for never were "dues" to the State, and never were part of the capital stock of said State bank, under the law of this State.

2d. That the paper issues of said bank never were by law receivable in payment of said notes sued on; and that long after said bank's issues had ceased to be a common currency, and had sunk greatly below par, the said defendants executed said bond and expressly promised to pay "specie or its equivalent," expressly waiving any pretence they may have had to pay in bank issues.

3d. That the law authorizing the receipt of said State bank paper in payment of State dues, was repealed long before said pretended thereof.

4th. That said plea no where shows that said bank paper was in the hands of said defendants, and was offered to be paid or tendered before the repeal of said bank charter, so far as the receipt of bank issues for State dues was concerned.

5th. That said defendants do not bring into court the costs of this cause.

6th. That said plea shows on its face that no legal or sufficient tender ever was made.

7th. That said plea, if any thing, only shows an equitable ground of offset and no legal ground of defence.

8th. That the bonds sued on are part of a trust fund granted by Congress to the State for special purposes, over which she has no control except to collect and disburse the same to effect those objects; and that she cannot apply the same or the proceeds thereof to the payment of her ordinary liabilities without a breach of trust; nor could she receive depreciated paper therefor, though she be ultimately responsible for the redemption thereof, which would delay the accomplishment of the objects of the trust without a breach of faith.

9th. That said State bank paper never was receivable in payment of demands due the State in a merely fiduciary character, as was the case with the bonds sued on.

10th. That in the present form said defendants have no right to go into or show upon what consideration said bonds were founded.

11th. That said plea does not show that said defendants were always ready to pay.

12th. That said plea constitutes no bar to the action.

13th. That the same is otherwise informal and insufficient.

Whereupon said plaintiff prays judgment, &c.

E. CUMMINS,
Attorney for plaintiff.

Filed 3d November, 1847.

GORDON N. PEAY, *Clerk.*

Proceedings had December 23d, A. D. 1847.

THOMAS S. DREW, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, plaintiff, vs. JAMES TRIGG, Richard Pryor, and John W. Paup, defendants. } In debt.

Judgment on demurrer.

This day came the parties by their attorneys, and the court here being now sufficiently advised of the matters of law arising on the demurrer to the plea of tender in this cause, and the court being now sufficiently advised in regard to the matters of law arising thereon, is of opinion that said demurrer ought to be sustained. It is therefore considered by the court that said demurrer be sustained, and that the plaintiff recover against the defendants all his costs by him about said suit expended.

Trial.

And thereupon neither party requiring a jury, this cause came on for trial before the court sitting as a jury, the defendants having on the second day of November, A. D. 1847, brought into court here the sum of six thousand one hundred dollars in notes issued by the Bank of the State of Arkansas, and ten cents in current money of the United States, which moneys still remain in court here as for and in payment of so much of said debt and damages as has been incurred for the purchase of six hundred and forty acres of land, sold to said James Trigg, and also offered to pay and paid all the costs of this suit.

Whereupon the matters arising herein being heard and by the court fully understood, the court here is of opinion that notwithstanding the said bringing into court of the moneys aforesaid, and said offer to pay the costs, the plaintiff ought to have judgment for the whole amount of the debt demanded, with damages as demanded by his declaration, (less the sum of ten cents.)

Judgment.

It is therefore considered by the court that the said plaintiff, Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, recover against the said defendants, James Trigg, Richard Pryor, and John W. Paup, the sum of six thousand eight hundred and sixty dollars, debt specified in the declaration, together with the sum of three thousand eight hundred and forty-nine dollars and ten cents, damages sustained by reason of the detention of said debt, with interest on said debt and damages at the rate of ten per centum per annum from this date until paid, and also all the costs by him about his suit in this behalf expended and remaining unpaid.

Whereupon the defendants excepted to the opinion and finding of the court, and filed their bill of exceptions, which is signed and ordered to form a part of the record of the case.

Filing exceptions.

In Pulaski circuit court, at October term, A. D. 1847.

JAMES TRIGG, Richard Prior, and John W. Paup, defendants, ads. THOS. S. DREW, as Gov., &c., plaintiff. } No. 220.

Bill of exceptions.

Be it remembered, that on the trial of this cause, it being in evidence that, on the second day of November, A.D. 1847, the defendants brought into court here, to be paid to the plaintiff, the sum of six thousand one hundred dollars in notes issued by the Bank of the State of Arkansas prior to the year 1845, which notes of said bank were proven to be worth only thirty cents to the dollar of the nominal amount thereof, and ten cents in current money of the United States, all which still remained in said court; that said amount of money so deposited was nominally the whole amount of principal and interest then due upon said bonds in the declaration mentioned, for so much of each of said bonds as was the consideration of the purchase of the right to locate and enter six hundred and forty acres of the land in the plea of tender mentioned; and that all and singular the facts in said plea of tender alleged are true; and that all the notes so brought into court were issued by said bank, signed by her president and cashier, payable each to a certain person or bearer in current money of the United States, and all either payable on demand or over due; and that said defendants at the same time offered to pay, and did pay, all the costs of this suit; and there being no other evidence offered in the case except the bonds in the declaration mentioned, and the defendants insisting that judgment should be rendered for the plaintiff for the sum of two thousand nine hundred and forty dollars debt, and the interest thereon at the rate of ten per centum per annum from the thirteenth day of May, A. D. 1842, as damages, and for costs, and for no more; whereupon the court decided that, notwithstanding the premises, the plaintiff was entitled to judgment for the whole debt in the declaration mentioned, and all interest thereon, less the sum of ten cents aforesaid, and rendered judgment accordingly; to which opinion, decision, and judgment of the court, the defendants except, and pray this their bill of exceptions be signed, sealed, and enrolled, which is done accordingly.

WILLIAM J. FEILD, *Judge*, [SEAL.]
GORDON N. PEAY, *Clerk*.

Filed December 23, A. D. 1847.

Certificate to Transcript.

STATE OF ARKANSAS, *county of Pulaski*, ss.

I, Gordon N. Peay, clerk of the Pulaski circuit court, do hereby

certify, that the foregoing twenty-two pages contain a full, true, and complete transcript of the record and proceedings in the case therein mentioned as the same remains in my office.

In testimony whereof I do hereunto set my hand and affix the seal of my office, at Little Rock, this 13th day of January, A. D. 1848.

[SEAL.]

GORDON N. PEAY, *Clerk.*
By JNO. COLEMAN PEAY, *Dep. Clerk.*

Proceedings in supreme court.

And afterwards, to wit, on Tuesday, February 1st, A. D. 1848, at a supreme court of said State, begun and held at the court-house in the city of Little Rock, on the 5th day of January, A. D. 1848, were the following proceedings, to wit:

Filing motion for sup.

At this day come the said plaintiffs by their attorney, and it is ordered that they have leave to file their motion for a writ of supersedeas in this cause; and thereupon said motion is filed and submitted; which said motion so filed as aforesaid is as follows, to wit: This day came the plaintiffs in error and move the court here for a supersedeas to the judgment in this case rendered as to the sum of six thousand one hundred dollars, with interest thereon, at the rate of ten per centum per annum, from the second day of November, A. D. 1847, until judgment, and whatever of interest hath since accrued on said sum, upon the assignment of errors herewith presented.

PIKE & BALDWIN.

Order thereon.

And afterwards, to wit, on Friday, February 4, A. D. 1848, were the following proceedings, to wit: The court being sufficiently advised of the motion of said plaintiffs for a writ of supersedeas in this cause, doth order that said motion be and it is hereby overruled.

Filing assignment, joinder, and assignment of errors.

And afterwards, to wit, at a supreme court of said State, begun and held at the court-house in the city of Little Rock, on the first Monday, being the 3d day of July, A. D. 1848, on the first day of said court were the following proceedings, to wit: At this day come the said plaintiffs by their attorney, and it is ordered that their assignment of errors be filed, and thereupon the same is filed. And at the same time comes the said defendant by his attorney, and it is ordered that his joinder in error be filed; and thereupon the same is filed. And said assignment of errors, so filed as aforesaid, is in the following words: And the said plaintiffs in error come and say that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that said circuit court sustained the demurrer of said defendant in error to said plea of said plaintiffs in error, when by law said demurrer should have been overruled.

There is also error in this, that, by the record aforesaid, it appears

that on the second day of November, A. D. 1847, the said plaintiffs in error brought into said circuit court in said suit, and there deposited, to be paid to said defendant in error, the sum of six thousand one hundred dollars in notes issued by the Bank of the State of Arkansas, and ten cents in current money of the United States, being the whole amount then due for the purchase of six hundred and forty acres of land sold to said James Trigg; and then offered to pay, and did pay, all the costs of said suit; which moneys still remained in said court at the date of said judgment; yet the said circuit court did adjudge and determine that said defendant in error was notwithstanding entitled to judgment for the whole amount of debt and interest in the declaration demanded, and for costs, less by the sum of ten cents, part of said interest, and rendered judgment accordingly.

There is also error in this, that by the record aforesaid it appears that said circuit court rendered judgment against said plaintiffs in error in favor of said defendant in error for the whole amount of debt and interest demanded, less by said sum of ten cents, and costs; whereas by law said judgment should have been only for said amounts less by the sum so deposited as aforesaid, with interest at the rate of ten per centum per annum from the second day of November until the day of judgment, without costs; wherefore, and for other errors in the record and proceedings aforesaid apparent, the said plaintiffs in error pray that the judgment may be reversed, annulled, and wholly held for nought; and that they be restored to all things which they have lost by occasion thereof.

PIKE & BALDWIN.

Joinder in error.

And the said joinder in error, so filed as aforesaid by said defendant, is as follows: And now on this day comes said defendant and says, there is no error in the record and proceedings aforesaid, or in the giving of judgment aforesaid; wherefore he prays an affirmance of said judgment, with costs and damages, in pursuance of the statute.

E. CUMMINS, *Att'y for def't.*

Return of sci. fa.

And afterwards, to wit, on the fourteenth day of July, eighteen hundred and forty-eight, came Andrew J. Hutt, sheriff of Pulaski county, to whom the writ of scire facias in this case issued as aforesaid was directed, and made return thereof as follows: I do hereby certify, that I return this writ, executed by order of E. Cummins, attorney of the State of Arkansas. Service 50, mileage 6 = 56c.

A. J. HUTT, *Sheriff.*

Submission.

And afterwards, to wit, on Friday, July 21st, A. D. 1848, were the following proceedings, to wit: At this day come the said plaintiffs and

defendant by their attorneys, and this cause is submitted, and by the court taken under advisement.

Judgment.

And afterwards, to wit, on Monday, July 24, A. D. 1848, were the following proceedings, to wit: This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski county, and was argued by counsel; on consideration whereof, this court doth adjudge and decide that the act of the General Assembly of the State of Arkansas, approved January 10, 1845, repealing the 28th section of the act of said General Assembly of said State, incorporating said bank of said State, is not a law impairing the obligation of any contract involved in this case, nor contrary in any wise in regard to this case to the Constitution of the United States, which was one of the questions in issue, and necessary to be adjudicated in this case; and that said State is in no wise bound by law to receive the notes and bills of said bank, issued before the passage of said act of January 10, 1845, in payment of the debt due to said State, as laid in the declaration, which was one other question involved in and necessary to the adjudication of this case; wherefore, there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court, that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed, with costs. It is further considered, that said defendant recover of said plaintiffs all his costs in this court in this cause expended, and have execution thereof.

Opinion.

And thereupon the court, by the Hon. Thomas Johnson, chief justice, delivered the following opinion: The facts of this case being similar, in every essential particular, to those in the case of John W. Paup et als., decided at the present term of this court, the law governing it is necessarily the same. The judgment of the circuit court is consequently affirmed.

And afterwards, to wit, on the thirty-first day of July, eighteen hundred and forty-eight, the said plaintiffs presented to the clerk of said supreme court a writ of error, issued by the clerk of the circuit court of the United States for the district of Arkansas, and allowed by the Hon. Thomas Johnson, chief justice of our said supreme court of the State of Arkansas, and also filed a copy thereof in this cause; which said writ of error and allowance are in the following words:

Writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the supreme court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a

judgment, in a plea which is in the said supreme court of the State of Arkansas, before you, between James Trigg, John W. Paup, and Richard Pryor, plaintiffs in error, and his excellency Thomas S. Drew, as Governor of said State of Arkansas, and successor of Archibald Yell, deceased, defendant in error, a manifest error hath happened, to the great damage of the said James Trigg, John W. Paup, and Richard Pryor, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Su-
[SEAL.] preme Court of the United States, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third year.

Attest: WM. FIELD,
Clerk of the C. C. U. S. for the district of Arkansas.

STATE OF ARKANSAS.

Allowed by me, and ordered that security be given according to law in the sum of twenty thousand dollars in the within case.

THOMAS JOHNSON,
Chief Justice of the S. C. of Arkansas.

July 28, A. D. 1848.

And afterwards, to wit, on the fourteenth day of August, in the year aforesaid, the said plaintiffs filed their bond, with the approval thereof of the said chief justice of our supreme court endorsed thereon, which said bond and approval are in the following words:

Bond.

Supreme Court of the United States.

JAMES TRIGG, John W. Paup, and Richard Pryor, vs. THOMAS S. DREW, as Governor of the State of Arkansas. } In error.

Know all men by these presents, that we, James Trigg, John W. Paup, and Richard Pryor as principals, and T. M. R. Bankhead and H. P. Poindexter as securities, are held and firmly bound unto the above

named Thomas S. Drew, as Governor of the State of Arkansas, and successor of Archibald Yell, deceased, in the sum of twenty thousand dollars, to be paid unto him and his successors in office; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our executors and administrators, firmly by these presents. Sealed with our seals, and dated this eighth day of August, A. D. 1848.

Whereas the above named James Trigg, John W. Paup, and Richard Pryor, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Arkansas. Now, therefore, the condition of this obligation is such, that if the above named James Trigg, John W. Paup, and Richard Pryor, shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES TRIGG, [L. S.]
JNO. W. PAUP, [L. S.]
RICH'D PRYOR, [L. S.]
T. M. R. BANKHEAD, [L. S.]
H. P. POINDEXTER. [L. S.]

Sealed and delivered in presence of—
WM. BURTON, as to Paup and Trigg.
M. T. REED, as to Poindexter.
JOHN ANDERSON, as to Bankhead and Pryor.

Approval.

I hereby approve of the within bond and the security therein as sufficient.

THOMAS JOHNSON,
Chief justice of the supreme court of Arkansas.

In pursuance of which said writ of error, and the allowance thereof, a record of the judgment aforesaid, with all things thereunto relating, together with said writ of error annexed, is hereby transmitted to the Supreme Court of the United States, according to the mandate thereof.

STATE OF ARKANSAS, *sct.*

In testimony that the foregoing thirty pages contain a full, true, and complete transcript of the record and proceedings of said supreme court in the case in the caption thereof stated, except the briefs of counsel therein filed:

I, Luke E. Barber, clerk of said supreme court, have hereto set my hand and affixed the seal of said supreme court, at my office [SEAL.] in the city of Little Rock, this sixth day of October, in the year eighteen hundred and forty-eight.

L. E. BARBER,
Clerk sup. court, Ark.

James Trigg et al., to L. E. Barber, clk. sup. ct., Arks.

To making out, certifying this transcript, and returning writ of error, ... $11 90

Test: L. E. BARBER, *Clk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the supreme court of Arkansas, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said supreme court of the State of Arkansas, before you, between James Trigg, John W. Paup, and Richard Pryor, plaintiffs in error, and his excellency Thomas S. Drew, as Governor of said State of Arkansas, and successor of Archibald Yell, deceased, defendant in error, a manifest error hath happened, to the great damage of the said James Trigg, John W. Paup, and Richard Pryor, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-seventh day of [SEAL.] July, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third year.

Attest: WM. FIELD,
Clerk of the circuit court of the United States, for the district of Arkansas.

STATE OF ARKANSAS.

Allowed by me, and ordered that security be given according to law in the sum of twenty thousand dollars in the within cases.

THOMAS JOHNSON,
Chief justice of the supreme court of Arkansas,
July 28th, A. D. 1848.

STATE OF ARKANSAS,
In the supreme court, sct.

I, Luke E. Barber, clerk of the supreme court of said State, do hereby certify, that in obedience to the mandate of the within and foregoing

writ of error, and the allowance thereof by the Hon. Thomas Johnson, chief justice of said supreme court, I have made out and certified a full, true, and complete transcript of the record and proceedings of said supreme court in the case in said writ of error, except as in the certificate thereof is excepted; which is hereto attached and now openly sent to the Supreme Court of the United States, as by said writ it is commanded.

In testimony whereof I have hereto set my hand as clerk of said supreme court, and affixed the seal of said court, at my office [SEAL.] in the city of Little Rock, this sixth day of October, in the year eighteen hundred and forty-eight.

L. E. BARBER,
Clerk sup. ct., Ark.

UNITED STATES OF AMERICA, *ss.*

To his excellency Thomas S. Drew, as Governor of the State of Arkansas, and as successor of Archibald Yell, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein James Trigg, John W. Paup, and Richard Pryor are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Johnson, chief justice of the supreme court of the State of Arkansas, this twenty-seventh day of July, A. D. 1848, and of the [independence of the] United States the seventy-third year.

THOMAS JOHNSON,
Chief justice of the supreme court of Arkansas.

ARKANSAS, *sct.*

We, Thomas S. Drew, as Governor of the State of Arkansas, and Ebenezer Cummins, as land attorney and State collector, Arkansas, do hereby acknowledge due and legal service of the within process upon

THOS. S. DREW,
Governor of Arkansas.
E. CUMMINS,
October 21st, 1849. *Law atto. and State coll., Ark.*

I do hereby certify, that I executed the within citation on the within named Thomas S. Drew, Governor of Arkansas, and Ebenezer Cummins, land attorney, &c., of Arkansas, at Little Rock, Arkansas, on the 21st day of October, 1848, by then and there delivering to each [of] them a true copy hereof. Service and copy, $1 00.

ELIAS RECTOR, *U. S. marshal,*
for the Arkansas district.